

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

AMOS C. STANFORD and J.M. STANFORD
Respondents

Case Nos.: I-00-70184
I-00-20307

FINAL ORDER

I. Introduction

On October 9, 2001, the Government served a Notice of Infraction upon Respondents Amos C. Stanford and J.M. Stanford, alleging that they violated 21 DCMR 700.3, which requires property owners to containerize solid wastes properly. The Notice of Infraction alleged that the violation occurred on October 5, 2001 at 2384 Champlain Street, N.W. and sought a fine of \$1,000.

Respondents did not file an answer to the Notice of Infraction within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D.C. Official Code § 2-1802.05). Accordingly, on November 19, 2001, this administrative court issued an order finding Respondents in default, assessing the statutory penalty of \$1,000 required by D.C. Official Code § 2-1801.04(a)(2)(A) and requiring the Government to serve a second Notice of Infraction pursuant to D.C. Official Code § 2-1802.02(f).

The Government served the second Notice of Infraction on December 6, 2001. Respondents filed a plea of Deny, and I issued an order setting a hearing on February 19, 2002 at 1:00 P.M. Gerard Brown, the inspector who issued the Notice of Infraction, appeared for the hearing. There was no appearance for Respondents, and the Docket Clerk received no answer after calling Respondents at the telephone number they had provided on their plea form. Pursuant to D.C. Official Code § 2-1802.03, the hearing proceeded in Respondents' absence.

Based upon the testimony of the Government's witness, my evaluation of his credibility, the documents introduced into evidence and the entire record in this matter, I now make the following findings of fact and conclusions of law.

II. Findings of Fact

Respondents own an apartment building at 2384 Champlain Street, N.W. On October 5, 2001, Mr. Brown observed a trash dumpster at the rear of the property. The dumpster was directly adjacent to a wall, and was uncovered. It was filled with plastic bags of trash, and various food wastes were inside the bags. Those wastes were accessible to rats, which could climb the wall, jump into the dumpster, and rip open the plastic bags.

As evidenced by the certificate of service, Mr. Brown served the first Notice of Infraction by first class mail on October 9, 2001. The U.S. Postal Service has not returned that mailing to the Department of Health. Due to Respondents' failure to attend the hearing, there is no evidence explaining their failure to file a timely response to the first Notice of Infraction.

III. Conclusions of Law

The rule at issue provides:

All solid wastes shall be stored and containerized for collection in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard.

21 DCMR 700.3.

The storage of waste at Respondents' building on October 5, 2001 violated § 700.3 because rats easily could obtain food by gaining access to the plastic bags in the uncovered dumpster and ripping them open to get the food wastes inside. The Rodent Control Act of 2000 classified a violation of § 700.3 as a Class 1 infraction, which is punishable by a fine of \$1,000 for a first offense.¹ 16 DCMR 3201. A \$1,000 fine, therefore, will be imposed.

The Civil Infractions Act, D.C. Code Official Code §§ 2-1802.02(f) and 2-1802.05, requires the recipient of a Notice of Infraction to demonstrate "good cause" for failing to answer it within twenty days of the date of service by mail.² If a party can not make such a showing, the statute requires that a penalty equal to the amount of the proposed fine must be imposed. D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f). Because Respondents have not provided

¹ The Rodent Control Act of 2000 is Title IX of the Fiscal Year 2001 Budget Support Act of 2000, effective October 19, 2000, D.C. Law 13-172. See 47 D.C. Reg. 8692 (November 10, 2000); 47 D.C. Reg. 6308 (August 11, 2000). Section 910(b) of that Act established new fines for violations of various rodent control measures, including § 700.3. 47 D.C. Reg. at 6339 (August 11, 2000).

² The first Notice of Infraction was mailed to Respondents and has not been returned by the Postal Service. Service of that notice, therefore, was proper pursuant to both the Due Process Clause and the Civil Infractions Act, D.C. Official Code §§ 2-1802.01 and 2-1802.05. *Dusenbery v. United States*, No. 00-6657, slip op. at 7-12 (U.S. January 8, 2002); *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 800 (1983); *McCaskill v. District of Columbia Dep't of Employment Servs.*, 572 A.2d 443, 445 (D.C. 1990); *Carroll v. District of Columbia Dep't of Employment Servs.*, 487 A.2d 622, 624 (D.C. 1985).

any evidence of their reasons for not responding to the first Notice of Infraction, there is no basis for concluding that they had good cause for their failure. The statute, therefore, requires them to pay a \$1,000 penalty in addition to the fine.

IV. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this _____ day of _____, 2002:

ORDERED, that Respondents, who are jointly and severally liable, shall pay a total of **TWO THOUSAND DOLLARS (\$2,000)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if the Respondents fail to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, starting from the date of this Order, pursuant to D.C. Official Code § 2-1802.03 (i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' licenses or permits pursuant to D.C. Official Code § 2-1802.03 (f), the placement of a lien on real and personal property owned by Respondents

pursuant to D.C. Official Code § 2-1802.03(i), and the sealing of Respondents' business premises or work sites pursuant to D.C. Official Code § 2-1801.03 (b)(7).

/s/ 02/25/02

John P. Dean
Administrative Judge